

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

In re: LUPRON® MARKETING
AND SALES PRACTICES LITIGATION

MDL NO. 1430

2004 OCT 29 P 4: 22

U.S. DISTRICT COURT
DISTRICT OF MASS.

THIS DOCUMENT RELATES TO
CASE NO.: 1:04-CV-10175-RGS.

Master File No. 01-CV-10861
1:04-CV-10175-RGS
Judge Richard G. Stearns

**TAP PHARMACEUTICAL PRODUCTS INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO COUNT V OF LIBERTY NATIONAL INSURANCE COMPANY AND
UNITED AMERICAN INSURANCE COMPANY'S SECOND AMENDED COMPLAINT**

Defendant, TAP Pharmaceutical Products Inc. ("TAP"), for its Answer and Affirmative
Defenses to Count V of Liberty National Insurance Company and United American Insurance
Company's Second Amended Complaint states as follows:

COUNT FIVE

(Common Law Fraud)
(Against Defendants Abbott and TAP)

153. Plaintiffs incorporate and reallege the previous paragraphs as if fully set forth
herein.

ANSWER: TAP incorporates by reference Paragraphs 1 through 152 of TAP Pharmaceutical
Products Inc.'s Answer and Affirmative Defenses to Second Amended Complaint Of Liberty
National Insurance Company And United American Insurance Company, filed with this Court on
March 12, 2004, as if fully set forth herein.

154. The Defendants' misrepresentations and/or omissions discussed herein were
knowingly false, misleading, and/or fraudulent or were made with reckless indifference to the
truth.

ANSWER: To the extent the allegations in Paragraph 154 constitute legal conclusions, no
response is required. TAP denies the remaining allegations in Paragraph 154.

155. In overstating the AWP for Lupron[®], the defendants caused such representations to be made with the intent of inducing the public, including Liberty National and United American, to act upon them and overpay for the drug.

ANSWER: Denied.

156. The misrepresentations and omissions were material to the amounts Liberty National and United American reimbursed for prescriptions of Lupron[®], and were made in order to induce Liberty National and United American to make higher payments.

ANSWER: To the extent the allegations in Paragraph 156 constitute legal conclusions, no response is required. TAP denies the remaining allegations in Paragraph 156.

157. Liberty National and United American reasonably relied on the misrepresentations or omissions made by or on behalf of the Defendants, including but not limited to those representations made regarding the AWP in the pharmaceutical industry publication, *Red Book*.

ANSWER: To the extent the allegations in Paragraph 157 constitute legal conclusions, no response is required. TAP denies the remaining allegations in Paragraph 157.

158. But for the Defendants' material misrepresentations and omissions, Liberty National and United American would not have overpaid for Lupron[®], and would not have suffered the financial loss arising from Defendants' deceptive schemes.

ANSWER: Denied.

159. By reason of the foregoing, and as a proximate cause of said fraud and acts committed in furtherance thereof, Liberty National and United American have suffered grievous injury and has been damaged as alleged herein.

ANSWER: To the extent the allegations in Paragraph 159 constitute legal conclusions, no response is required. TAP denies the remaining allegations in Paragraph 159.

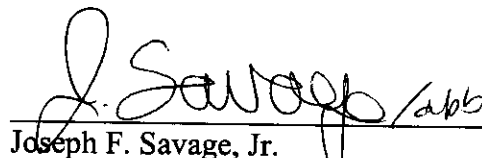
160. The acts alleged were malicious, oppressive, and contrived for the purpose of achieving the objects of the fraud; therefore, Liberty National and United American are entitled to punitive damages.

ANSWER: To the extent the allegations in Paragraph 160 constitute legal conclusions, no response is required. TAP denies the remaining allegations in Paragraph 160.

AFFIRMATIVE DEFENSES

TAP incorporates by reference its Affirmative Defenses listed in TAP Pharmaceutical Products Inc.'s Answer and Affirmative Defenses to Second Amended Complaint Of Liberty National Insurance Company And United American Insurance Company, filed with this Court on March 12, 2004, as if fully set forth herein.

Dated: October 29, 2004



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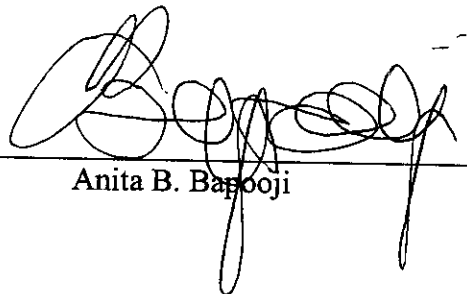
***ATTORNEYS FOR TAP PHARMACEUTICAL
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on the 29th day of October 2004 the foregoing **TAP Pharmaceutical Products Inc.'s Answer and Affirmative Defenses to Count V Of Liberty National Insurance Company and United American Insurance Company's Second Amended Complaint** was served, by first class mail, postage prepaid, to:

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